

Calendar No. 233

113TH CONGRESS
1ST SESSION

S. 42

To provide anti-retaliation protections for antitrust whistleblowers.

IN THE SENATE OF THE UNITED STATES

JANUARY 22 (legislative day, JANUARY 3), 2013

Mr. LEAHY (for himself and Mr. GRASSLEY) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

OCTOBER 31, 2013

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide anti-retaliation protections for antitrust
whistleblowers.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 **SECTION 1. SHORT TITLE.**
- 4 This Act may be cited as the “Criminal Antitrust
- 5 Anti-Retaliation Act of 2013”.

1 **SEC. 2. AMENDMENT TO ACPERA.**

2 The Antitrust Criminal Penalty Enhancement and
3 Reform Act of 2004 (Public Law 108-237; 15 U.S.C. 1
4 note) is amended by adding after section 215 the fol-
5 lowing:

6 **“SEC. 216. ANTI-RETALIATION PROTECTION FOR WHISTLE-**

7 **BLOWERS.**

8 **“(a) WHISTLEBLOWER PROTECTIONS FOR EMPLOY-**
9 **EES, CONTRACTORS, SUBCONTRACTORS, AND AGENTS.—**

10 **“(1) IN GENERAL.**—No person, or any officer,
11 employee, contractor, subcontractor, or agent of
12 such person, may discharge, demote, suspend,
13 threaten, harass, or in any other manner discriminate
14 against a whistleblower in the terms and conditions
15 of employment because—

16 **“(A)** the whistleblower provided or caused
17 to be provided to the person or the Federal
18 Government information relating to—

19 **“(i)** any violation of, or any act or
20 omission the whistleblower reasonably believes to be a violation of the antitrust
21 laws; or

23 **“(ii)** any violation of, or any act or
24 omission the whistleblower reasonably believes to be a violation of another criminal
25 law committed in conjunction with a poten-

1 tial violation of the antitrust laws or in
2 conjunction with an investigation by the
3 Department of Justice of a potential viola-
4 tion of the antitrust laws; or

5 “(B) the whistleblower filed, caused to be
6 filed, testified, participated in, or otherwise as-
7 sisted an investigation or a proceeding filed or
8 about to be filed (with any knowledge of the
9 employer) relating to—

10 “(i) any violation of, or any act or
11 omission the whistleblower reasonably be-
12 lieves to be a violation of the antitrust
13 laws; or

14 “(ii) any violation of, or any act or
15 omission the whistleblower reasonably be-
16 lieves to be a violation of another criminal
17 law committed in conjunction with a poten-
18 tial violation of the antitrust laws or in
19 conjunction with an investigation by the
20 Department of Justice of a potential viola-
21 tion of the antitrust laws.

22 “(2) LIMITATION ON PROTECTIONS.—Para-
23 graph (1) shall not apply to any whistleblower if—

1 “(A) the whistleblower planned and initiated
2 a violation or attempted violation of the
3 antitrust laws;

4 “(B) the whistleblower planned and initiated
5 a violation or attempted violation of another
6 criminal law in conjunction with a violation
7 or attempted violation of the antitrust
8 laws; or

9 “(C) the whistleblower planned and initiated
10 an obstruction or attempted obstruction of
11 an investigation by the Department of Justice
12 of a violation of the antitrust laws.

13 “(3) DEFINITIONS.—In the section:

14 “(A) PERSON.—The term ‘person’ has the
15 same meaning as in subsection (a) of the first
16 section of the Clayton Act (15 U.S.C. 12(a)).

17 “(B) ANTITRUST LAWS.—The term ‘anti-
18 trust laws’ means section 1 or 3 of the Sherman
19 Act (15 U.S.C. 1, 3) or similar State law.

20 “(C) WHISTLEBLOWER.—The term ‘whistleblower’ means an employee, contractor, subcontractor, or agent protected from discrimination under paragraph (1).

24 “(b) ENFORCEMENT ACTION.—

1 “(1) IN GENERAL.—A whistleblower who alleges
2 discharge or other discrimination by any person in
3 violation of subsection (a) may seek relief under sub-
4 section (e) by—

5 “(A) filing a complaint with the Secretary
6 of Labor; or

7 “(B) if the Secretary has not issued a final
8 decision within 180 days of the filing of the
9 complaint and there is no showing that such
10 delay is due to the bad faith of the claimant,
11 bringing an action at law or equity for de novo
12 review in the appropriate district court of the
13 United States, which shall have jurisdiction
14 over such an action without regard to the
15 amount in controversy.

16 “(2) PROCEDURE.—

17 “(A) IN GENERAL.—A complaint filed with
18 the Secretary of Labor under paragraph (1)(A)
19 shall be governed under the rules and proce-
20 dures set forth in section 42121(b) of title 49,
21 United States Code.

22 “(B) EXCEPTION.—Notification made
23 under section 42121(b)(1) of title 49, United
24 States Code, shall be made to the person named
25 in the complaint and to the employer.

1 “(C) BURDENS OF PROOF.—A complaint
2 filed with the Secretary of Labor under para-
3 graph (1) shall be governed by the legal bur-
4 dens of proof set forth in section 42121(b) of
5 title 49, United States Code.

6 “(D) STATUTE OF LIMITATIONS.—A com-
7 plaint under paragraph (1)(A) shall be filed
8 with the Secretary of Labor not later than 180
9 days after the date on which the violation oc-
10 curs.

11 “(E) CIVIL ACTIONS TO ENFORCE.—If a
12 person fails to comply with an order or prelimi-
13 nary order issued by the Secretary of Labor
14 pursuant to the procedures in section 42121(b),
15 the Secretary of Labor or the person on whose
16 behalf the order was issued may bring a civil
17 action to enforce the order in the district court
18 of the United States for the judicial district in
19 which the violation occurred.

20 “(e) REMEDIES.—

21 “(1) IN GENERAL.—A whistleblower prevailing
22 in any action under subsection (b)(1) shall be enti-
23 tled to all relief necessary to make the whistleblower
24 whole.

1 “(2) COMPENSATORY DAMAGES.—Relief for any
2 action under paragraph (1) shall include—

3 “(A) reinstatement with the same seniority
4 status that the whistleblower would have had,
5 but for the discrimination;

6 “(B) the amount of back pay, with inter-
7 est; and

8 “(C) compensation for any special damages
9 sustained as a result of the discrimination in-
10 cluding litigation costs, expert witness fees, and
11 reasonable attorney's fees.

12 “(d) RIGHTS RETAINED BY WHISTLEBLOWERS.—
13 Nothing in this section shall be deemed to diminish the
14 rights, privileges, or remedies of any whistleblower under
15 any Federal or State law, or under any collective bar-
16 gaining agreement.”.

17 **SECTION 1. SHORT TITLE.**

18 *This Act may be cited as the “Criminal Antitrust
19 Anti-Retaliation Act of 2013”.*

20 **SEC. 2. AMENDMENT TO ACPERA.**

21 *The Antitrust Criminal Penalty Enhancement and
22 Reform Act of 2004 (Public Law 108-237; 15 U.S.C. 1
23 note) is amended by adding after section 215 the following:*

1 **“SEC. 216. ANTI-RETALIATION PROTECTION FOR WHISTLE-**2 ***BLOWERS.***3 “(a) *WHISTLEBLOWER PROTECTIONS FOR EMPLOY-*4 *EES, CONTRACTORS, SUBCONTRACTORS, AND AGENTS.—*

5 “(1) *IN GENERAL.*—No employer may discharge,
6 demote, suspend, threaten, harass, or in any other
7 manner discriminate against a covered individual in
8 the terms and conditions of employment of the covered
9 individual because—

10 “(A) the covered individual provided or
11 caused to be provided to the employer or the Fed-
12 eral Government information relating to—

13 “(i) any violation of, or any act or
14 omission the covered individual reasonably
15 believes to be a violation of the antitrust
16 laws; or

17 “(ii) any violation of, or any act or
18 omission the covered individual reasonably
19 believes to be a violation of another crimi-
20 nal law committed in conjunction with a
21 potential violation of the antitrust laws or
22 in conjunction with an investigation by the
23 Department of Justice of a potential viola-
24 tion of the antitrust laws; or

25 “(B) the covered individual filed, caused to
26 be filed, testified, participated in, or otherwise

1 *assisted an investigation or a proceeding filed or*
2 *about to be filed (with any knowledge of the em-*
3 *ployer) relating to—*

4 “(i) *any violation of, or any act or*
5 *omission the covered individual reasonably*
6 *believes to be a violation of the antitrust*
7 *laws; or*

8 “(ii) *any violation of, or any act or*
9 *omission the covered individual reasonably*
10 *believes to be a violation of another crimi-*
11 *nal law committed in conjunction with a*
12 *potential violation of the antitrust laws or*
13 *in conjunction with an investigation by the*
14 *Department of Justice of a potential viola-*
15 *tion of the antitrust laws.*

16 “(2) *LIMITATION ON PROTECTIONS.—Paragraph*

17 “(1) *shall not apply to any covered individual if—*

18 “(A) *the covered individual planned and*
19 *initiated a violation or attempted violation of*
20 *the antitrust laws;*

21 “(B) *the covered individual planned and*
22 *initiated a violation or attempted violation of*
23 *another criminal law in conjunction with a vio-*
24 *lation or attempted violation of the antitrust*
25 *laws; or*

1 “(C) the covered individual planned and
2 initiated an obstruction or attempted obstruction
3 of an investigation by the Department of Justice
4 of a violation of the antitrust laws.

5 “(3) *DEFINITIONS*.—In this section:

6 “(A) *ANTITRUST LAWS*.—The term ‘anti-
7 trust laws’ means section 1 or 3 of the Sherman
8 Act (15 U.S.C. 1, 3).

9 “(B) *COVERED INDIVIDUAL*.—The term ‘cov-
10 ered individual’ means an employee, contractor,
11 subcontractor, or agent of an employer.

12 “(C) *EMPLOYER*.—The term ‘employer’
13 means a person, or any officer, employee, con-
14 tractor, subcontractor, or agent of such person.

15 “(D) *PERSON*.—The term ‘person’ has the
16 same meaning as in subsection (a) of the first
17 section of the Clayton Act (15 U.S.C. 12(a)).

18 “(4) *RULE OF CONSTRUCTION*.—The term ‘viola-
19 tion’, with respect to the antitrust laws, shall not be
20 construed to include a civil violation of any law that
21 is not also a criminal violation.

22 “(b) *ENFORCEMENT ACTION*.—

23 “(1) *IN GENERAL*.—A covered individual who al-
24 leges discharge or other discrimination by any em-

1 *ployer in violation of subsection (a) may seek relief*
2 *under subsection (c) by—*

3 “*(A) filing a complaint with the Secretary*
4 *of Labor; or*

5 “*(B) if the Secretary has not issued a final*
6 *decision within 180 days of the filing of the com-*
7 *plaint and there is no showing that such delay*
8 *is due to the bad faith of the claimant, bringing*
9 *an action at law or equity for de novo review in*
10 *the appropriate district court of the United*
11 *States, which shall have jurisdiction over such*
12 *an action without regard to the amount in con-*
13 *troversy.*

14 “(2) *PROCEDURE.—*

15 “(A) *IN GENERAL.—A complaint filed with*
16 *the Secretary of Labor under paragraph (1)(A)*
17 *shall be governed under the rules and procedures*
18 *set forth in section 42121(b) of title 49, United*
19 *States Code.*

20 “(B) *EXCEPTION.—Notification made under*
21 *section 42121(b)(1) of title 49, United States*
22 *Code, shall be made to any individual named in*
23 *the complaint and to the employer.*

24 “(C) *BURDENS OF PROOF.—A complaint*
25 *filed with the Secretary of Labor under para-*

1 *graph (1)(A) shall be governed by the legal bur-*
2 *dens of proof set forth in section 42121(b) of title*
3 *49, United States Code.*

4 “*(D) STATUTE OF LIMITATIONS.—A com-*
5 *plaint under paragraph (1)(A) shall be filed*
6 *with the Secretary of Labor not later than 180*
7 *days after the date on which the violation occurs.*

8 “*(E) CIVIL ACTIONS TO ENFORCE.—If a*
9 *person fails to comply with an order or prelimi-*
10 *nary order issued by the Secretary of Labor pur-*
11 *suant to the procedures in section 42121(b), the*
12 *Secretary of Labor or the person on whose behalf*
13 *the order was issued may bring a civil action to*
14 *enforce the order in the district court of the*
15 *United States for the judicial district in which*
16 *the violation occurred.*

17 “(c) *REMEDIES.—*

18 “(1) *IN GENERAL.—A covered individual pre-*
19 *vailing in any action under subsection (b)(1) shall be*
20 *entitled to all relief necessary to make the covered in-*
21 *dividual whole.*

22 “(2) *COMPENSATORY DAMAGES.—Relief for any*
23 *action under paragraph (1) shall include—*

1 “(A) reinstatement with the same seniority
2 status that the covered individual would have
3 had, but for the discrimination;

4 “(B) the amount of back pay, with interest;
5 and

6 “(C) compensation for any special damages
7 sustained as a result of the discrimination in-
8 cluding litigation costs, expert witness fees, and
9 reasonable attorney’s fees.

10 “(d) *RIGHTS RETAINED BY WHISTLEBLOWERS.*—
11 *Nothing in this section shall be deemed to diminish the*
12 *rights, privileges, or remedies of any covered individual*
13 *under any Federal or State law, or under any collective*
14 *bargaining agreement.”.*

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